Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 58, nays 39, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—58

Alexander	DeMint	McConnell
Barrasso	Dorgan	Murkowski
Baucus	Ensign	Nelson (NE)
Bayh	Enzi	Pryor
Begich	Feingold	Reid
Bennet	Graham	Risch
Bennett	Grassley	Roberts
Bond	Gregg	Sessions
Brownback	Hagan	Shelby
Bunning	Hatch	Snowe
Burr	Hutchison	Tester
Casey	Inhofe	Thune
Chambliss	Isakson	Udall (CO)
Coburn	Johanns	Udall (NM)
Cochran	Johnson	Vitter
Collins	Kyl	Warner
Conrad	Landrieu	Webb
Corker	Lincoln	Wicker
Cornyn	Martinez	
Crapo	McCain	

NAYS—39

Akaka	Harkin	Merkley
Bingaman	Inouye	Murray
Boxer	Kaufman	Nelson (FL)
Brown	Kerry	Reed
Burris	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Lautenberg	Schumer
Carper	Leahy	Shaheen
Dodd	Levin	Specter
Durbin	Lieberman	Stabenow
Feinstein	Lugar	Voinovich
Franken	McCaskill	Whitehouse
Gillibrand	Menendez	Wyden

NOT VOTING—3

Byrd	Kennedy	Mikulski

The PRESIDING OFFICER. Under the previous order requiring 60 votes for adoption of the amendment, the amendment is withdrawn.

Mr. DURBIN. Mr. President, I move to reconsider the vote.

Mr. MENENDEZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, I ask unanimous consent that Senator KYL be recognized as in morning business for 10 minutes, and that Senator TESTER then be recognized for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona is recognized.

SOTOMAYOR NOMINATION

Mr. KYL. Mr. President, every American should be proud that a Hispanic woman—one with a very impressive background—has been nominated for the Supreme Court.

In evaluating a nominee, it is important that the Senate examine all aspects of the individual's career and his or her merit as a judge and not make judgments on the basis of gender or ethnicity.

It starts with the judge's decisions and opinions. Also important to understanding what an individual really thinks about things are his or her speeches, writings, and associations.

Judge Sotomayor's most widely known speech is, of course, her ''wise Latina woman'' speech, which was given in various fora over the years. It is clear that the often-quoted phrase is not just a comment out of context but is the essence of those speeches.

Judge Sotomayor's central theme was to examine whether gender and ethnicity bias a judge's decision. Judge Sotomayor concludes they do, that it is unavoidable. She develops this theme throughout the speech, including examining opposing arguments and examining evidence that suggests that gender makes a difference. She then quotes former Justice Sandra Day O'Connor's statement that men and women judges will reach the same decision and, in effect, disagrees, saying she is not so sure. That is when she says she thinks a ''wise Latina'' would reach a better decision.

Her attempt to recharacterize these speeches at the committee hearing strained credulity. I will address this issue at greater length during the confirmation debate, but suffice to it say that I remain unconvinced that she believes judges should set aside these biases, including those based on race and gender, and render the law impartially and neutrally.

Judge Sotomayor's address to the Puerto Rican ACLU, entitled ''How Federal Judges Look to International and Foreign Law under Article VI of the U.S. Constitution,'' also raises red flags.

In this speech, she inferred that foreign law should be used but later testified it should not. I will also discuss at length my concerns related to this matter during the confirmation debate and the problems I have squaring her testimony with the contents of this speech. The central point, of course, is that it is completely irrelevant to consider foreign law in U.S. courts. I don't believe Judge Sotomayor is sufficiently committed to this principle.

Judge Sotomayor's supporters argue that we should not focus on her speeches but on her ''mainstream'' judicial record. They claim she agreed with her colleagues, including Republican appointees, the vast majority of the time. That may be true, but as President Obama has reminded us, most judges will agree in 95 percent of the cases.

The hard cases are where differences in judicial philosophy become apparent.

I have looked at Judge Sotomayor's record in these hard cases and have found cause for concern. The U.S. Supreme Court has reviewed directly 10 of her decisions—8 of those decisions have been reversed or vacated, another sharply criticized, and 1 upheld in a 5 to 4 decision.

The most recent reversal was Ricci v. DeStefano, a case in which Judge Sotomayor summarily dismissed before trial the discrimination claims of 20 New Haven firefighters, and the Supreme Court reversed 5 to 4, with all nine Justices rejecting key reasoning of Judge Sotomayor's court.

In my view, the most astounding thing about the case was not the incorrect outcome reached by Judge Sotomayor's court—it was that she rejected the firefighters' claims in a mere one-paragraph opinion and that she continued to maintain in the hearings that she was bound by precedent that the Supreme Court said did not exist.

As the Supreme Court noted, Ricci presented a novel issue regarding ''two provisions of Title VII to be interpreted and reconciled, with few, if any, precedents in the court of appeals discussing the issue.'' One would think that this would be precisely the kind of case that deserved a thorough and thoughtful analysis by an appellate court.

But Judge Sotomayor's court instead disposed of the case in an unsigned and unpublished opinion that contained zero—and I do mean zero—analysis.

Some have speculated that Judge Sotomayor's panel intentionally disposed of the case in a short, unsigned, and unpublished opinion in an effort to hide it from further scrutiny. Was the case intentionally kept off of her colleagues' radar? Did she have personal views on racial quotas that prevented her from seeing the merit in the firefighters' claims?

Judge Sotomayor was asked about her Ricci decision at length during the confirmation hearing. Her defense, that she was just following ''established Supreme Court and Second Circuit precedent,'' as I said, is belied by the Supreme Court's opinion noting ''few, if any'' circuit court opinions addressing the issue.

When I pressed Judge Sotomayor to identify those controlling Supreme Court and Second Circuit precedents that allegedly dictated the outcome in Ricci, she dissembled and ran out the clock. Her ''answers'' answered nothing and, in my opinion, violated her obligation to be forthcoming with the Judiciary Committee.

I am also concerned about Judge Sotomayor's analysis—or lack thereof—in Maloney v. Cuomo, a second amendment case that could find its way to the Supreme Court next year. Maloney was decided after the Supreme Court's landmark ruling in District of Columbia v. Heller, which held that the right to bear arms was an individual right that could not be taken away by the Federal Government.

In Maloney, Judge Sotomayor had the opportunity to consider whether that individual right could also be enforced against the States, a question that was not before the Heller Court. In yet another unsigned opinion, Judge Sotomayor and two other judges held that it was not a right enforceable against States.

What are the legal implications of this holding? State regulations limiting or prohibiting the ownership and